



AT&T Local Service Negotiations Team Structure



<u>Subteam</u>	<u>Scope</u>	<u>Lead</u>	<u>Members</u>
Network (May break to inside plant/outside plant)	<ul style="list-style-type: none">- Interconnection- Colocation- Poles, Ducts, ROW- Signaling and Associated Data Bases- Loop- Switching- Transport- Number Portability- Dialing Parity- Etc.	S. Saboo	<ul style="list-style-type: none">S. GannonJ. JacobsonD. MillerJ. PilkintonS. TurnerD. KeatingJ. Cooper

NEG 002792

SS 3/27/96

24A

04/24/97 13:51



Next Steps (Draft for Discussion)

- ❖ Subteams Meet 3/27 - 4/1 am
- ❖ Full Team Meeting 4/1 pm - 4/2 noon
 - ❑ Review Subteam Workplans
 - ❑ Identify Subteam Specific Gaps, Issues, Deliverables, Milestones
 - ❑ Develop Overall Negotiations Workplan
 - ❑ Review and Status on Action Items from 3/26 Meeting
 - ❑ Prepare for 4/5 Leadership Team Meeting
 - ❑ Prepare Overall Negotiations Meeting Schedules
 - ◆ Subteams
 - ◆ Negotiations Team
 - ◆ Leadership Team
 - ❑ Subteam Negotiations Meetings - 4/2 pm
 - ❑ Meeting Evaluation

ATTACHMENT 9



Nancy Dalton
SW Region Business Planning VP

Suite 570
5429 LBJ Freeway
Dallas, TX 75240

June 5, 1996

Mr. Gary Juhl
District Manager - Strategic Planning
Southwestern Bell Telephone
One Bell Center, Room 34-Y-1
Saint Louis, MO 63101

Subject: AT&T & SWBT Interconnection Negotiations; TX, MO, & OK (Unbundled Network Elements)

Gary:

At the May 15, 1996, AT&T and SWBT Core Team meeting in St. Louis, the network subteam provided an overview of the negotiations activities on unbundled elements. At that meeting we took an action item to further clarify the status of each element and to suggest the next steps for our unbundling efforts. This letter is in response to that action item.

The following is a list of AT&T unbundled elements with the status of each element and discussion areas:

Network Interface Device

Residential - SWBT has agreed to unbundle the residential NID. The maintenance/repair issue associated with restricting the technical support to only SWBT technicians is a SWBT policy issue to be worked by the maintenance team.

External MDU

Internal MDU - SWBT's policy around alteration of the network and technical feasibility regarding reliability and security within MDU closures and arrangements are the driving factor for SWBT's position not to provide this element. AT&T understands SWBT's technical concerns and is working internally to determine whether or not this element will be required in the short term. In the long term, AT&T will be disadvantaged in serving the MDU market if this element is not unbundled.

Loop Distribution

Loop Concentrator / Multiplexer

Loop Feeder

SWBT's policy not to "alter" its network to support unbundling is the issue associated with these elements. AT&T maintains that access to these elements is technically feasible, however, AT&T will investigate internally the possibility of buying loop distribution and loop concentrator/multiplexer as a combination in the short term and will continue negotiations with SWBT to determine a long term technical solution to purchase these individually.

With respect to loop feeder, AT&T requires that it be unbundled in the initial unbundling stages to provide the connection between AT&T wired MDUs and the switching element or ring.

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Local Switching

SWBT defines switching to include only the most basic switching functions. AT&T interprets the FTA to define "elements" as including all features/ functions of the particular element. Therefore, AT&T concludes that switching be unbundled to the extent that it includes the basic switching functions, the features/functions provided by the switch including, but not limited to, access to AIN triggers, customized routing of traffic (e.g., operator services and DA), etc. AT&T requests that SWBT reconsider its position on this element.

Operator Services

Directory Services

SWBT's position is that these elements will be available through separate negotiated arrangements. AT&T maintains that since these elements can be made available under separate arrangements today and are available through other vehicles, they are therefore conceptually unbundled. Additionally, AT&T contends that these services are generally available in the marketplace as evidenced by the ATI interconnection agreement. AT&T views these elements as basic network building blocks and urges SWBT to agree to unbundle these elements and move future discussions to the pricing negotiations table.

Common Transport

SWBT has agreed to provide this element but has limited it to a "pre-defined" local calling scope. AT&T maintains that SWBT's agreement to provide this is evidence that Common Transport can be unbundled. AT&T does not agree with SWBT's calling scope limitation and requests SWBT to reconsider this and move this item to the pricing negotiations table.

Dedicated Transport

SWBT has stated that this element is available in existing tariffs and has refused to unbundle this basic network function. AT&T maintains that availability in existing tariffs is evidence that this element is unbundled and that the remaining issues are price related. Additionally, SWBT has refused to provide dedicated systems to AT&T as part of this element. We are aware that this capability is generally available in the market place (e.g. Pacific Bell tariff FCC No. 128) and, as a result, urge SWBT to provide the dedicated systems capability through the unbundled element process. AT&T requests that SWBT concur with AT&T's definition of Dedicated Transport and initiate discussions at the pricing negotiations table.

Signaling Transfer Points

SCPs/Databases

SWBT has stated that these elements are available in the existing tariff F.C.C. No. 73, section 22. AT&T believes these elements are generally available in the market place from providers such as ITN, SNET Carrier Services, INS/MEANS, GTE INS, and PACE. The number of alternate providers making these elements available, and the fact that SWBT provides these elements to ICOs in its territory demonstrates that these elements should be unbundled. We urge that SWBT agree to unbundle these elements and move discussions to the pricing negotiations table.

Signaling Link Transport

SWBT has refused to unbundle this element because it is available in the existing tariff F.C.C. No. 73, section 22. The fact that it is available in an existing tariff is evidence that this element should be unbundled. We urge SWBT to agree to unbundle this element and initiate pricing negotiations.

Tandem Switching

SWBT's position is that all uses of tandem switching functions are access arrangements. This element is available in the marketplace on an unbundled basis (e.g. ICG, Inc. and through SWBT as access). AT&T contends that all of the issues on this element are pricing related and that the Tandem Switching element should be unbundled and moved to the pricing negotiations table.

NEG 007790

Proprietary and Confidential Information

Subject to a SWBT and ATT nondisclosure agreement and should not be shared except as provided thereto.

AIN

SWBT has refused to discuss this pending F.C.C. rulemaking. AT&T is prepared to discuss this issue now and urges SWBT to negotiate this element while the F.C.C. rulemaking efforts are in progress.

Data Switching

SWBT has refused to unbundle this element because it is available in existing tariffs. The fact that it is available in an existing tariff is evidence that this element is already unbundled. We urge SWBT to agree to unbundle this element and begin pricing negotiations.

Digital Cross-connect Systems (DCS)

SWBT's position is that this element is available in existing tariffs. The fact that it is available in an existing tariff is evidence that this element is already unbundled. This element should be unbundled and moved to the pricing negotiations table. Additionally, SWBT has refused to allow AT&T remote access to DCS systems stating that it is technically infeasible and that it would constitute an unnecessary "alteration" of the network. AT&T contends that this is technically feasible and is generally available in the marketplace (e.g. Ameritech tariff F.C.C. No. 2). SWBT policy and price issues are delaying agreement on this issue. AT&T requests SWBT to reconsider its position by agreeing to provide this capability and initiate pricing discussions.

We request that SWBT reconsider its positions as listed above. Many of the elements are ready for the next level of negotiations at both the operational and pricing tables.

We appreciate the time for discussion of these positions on the core team agenda.

Sincerely,


Nancy Dalton

SW Region Business Planning VP

NEG 007791

Proprietary and Confidential Information

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ATTACHMENT 10



Southwestern Bell Telephone

"The One to Call On"

June 21, 1996

Gary A. Juhl, P.E.
Director-
Competitive Assurance

Ms. Nancy Dalton
SW Region Business Planning VP
AT&T
5429 LBJ Freeway, Suite 570
Dallas, Texas 75240

Dear Nancy:

This is in reply to the three AT&T letters dated June 5, 1996 regarding the SWBT and AT&T Interconnection negotiations for Texas, Missouri and Oklahoma. These were specifically: 1) Your letter concerning unbundled element costs calculated by AT&T, 2) Mr. Saboo's letter stating in detail AT&T's requested unbundled elements and explanation of how AT&T plans to combine unbundled elements, and 3) Your letter which also summarizes AT&T's requested unbundled elements and sets forth AT&T's view of the current positions of the parties in the negotiations.

I appreciate the effort spent in summarizing AT&T's positions on the definitions and desired uses of unbundled elements as well as your views on unbundled element costs, as these documents typify the great intensity and enthusiasm with which representatives from both companies have approached these negotiations. Unfortunately, your summaries also highlight the fact that SWBT and AT&T have very basic philosophical differences as to what is actually necessary to comply with the requirements of section 251 of the Telecommunications Act of 1996.

Mr. Saboo's various sample "platforms" or scenarios clearly illustrate that AT&T believes that unbundled network elements may be purchased for the purpose of circumventing existing access rates and related access rate structures. For example, Scenario 1F states that "it is AT&T's expectation that Dedicated Circuits Combination may be ordered from the customer's premises to AT&T's POP", which of course is a direct surrogate for access. In addition, these scenarios make it clear that AT&T intends to combine unbundled components provided exclusively by SWBT to provide a finished service, i.e. the equivalent of a service that SWBT plans to offer for resale. As we have repeatedly discussed in negotiations, SWBT believes that both of these uses of unbundled network elements are not provided for in the Act, and are inconsistent with the intent of the Act, as section 251(g) clearly preserves SWBT's current Interexchange access tariffs. In addition, the fact that resale of complete services is required by the Act demonstrates Congress' intent that SWBT's finished services are to be made available in that fashion, not through a combination of individual network elements provided exclusively by SWBT. In summary, SWBT believes that the Act requires LEC's to make unbundled elements available for requesting carriers only where the elements are to be combined with their own or a third party's network components to provide telecommunications services.

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NEG010656

Further, in keeping with our belief that the Act intends carriers to use unbundled elements to "fill out" its own network, we have further refined the use of SWBT's cross-connect element as limited to cross-connect from a SWBT loop to a carrier's switching element.

In your letter, you ask SWBT to reconsider its position on unbundled network elements. We have repeatedly explained that we believe that the unbundled network elements offered by SWBT will allow AT&T to combine these elements with its own or a third party's network elements to provide all exchange and exchange access services. We have stated during negotiations that if AT&T would identify any services that AT&T cannot provide by combining SWBT network elements with AT&T's network, SWBT would re-examine its position on unbundled elements in light of that information. Absent new information, SWBT continues to believe that the unbundled elements we have defined fully comply with the requirements of the Act and, more importantly, enable LSP's to offer the services needed to enter the local services market.

In addition to the Network Elements that SWBT has defined, we have agreed in discussions with AT&T that the single residential network interface device (NID) may be technically feasible to provide to others. As such, SWBT is actively considering if we can offer this element. We have also discussed several AT&T requests for SS7 functionality. As noted in these discussions, SWBT is exploring the provision of local STP functionality to LSPs.

During negotiations, we have referred AT&T to FCC Docket 91-346 for SWBT's position on AIN. For clarification, let me summarize SWBT's position on this issue:

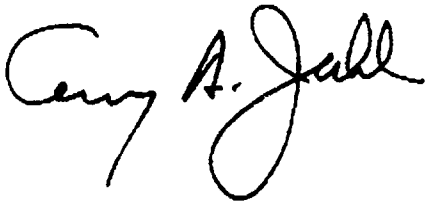
- SWBT supports open access to AIN if adequate mediation is provided to ensure network security and reliability, network and service integrity as well as service assurance.
- SWBT believes the Industry IN Project is the best means for developing the required mediation.
- SWBT does not believe that AT&T's proposal for essentially unmediated access at the SSP (where all IN requirements of a single customer are met by a single service provider) is technically feasible.
- SWBT believes the FCC should endorse the IN Project to remove doubt in the industry as to the outcome of the current federal proceeding and promote industry cooperation in working through the proposed industry project to facilitate development of the necessary mediation to allow open access to the LEC's IN functionalities.
- SWBT is an active participant in the Industry IN Project.

In regard to the cost information and "price ceilings" you have proposed, SWBT does not agree with the cost methodology employed. In addition, as SWBT representatives have explained in detail, many of the network elements you have asked be unbundled are either not technically feasible to provide or outline costs for services which are already available for resale in SWBT's existing tariffs. We will consider the prices presented for the elements which match the network elements defined by SWBT as an initial offer from AT&T, although we will not treat these as price ceilings.

In conclusion, in the early negotiation sessions, we spent considerable time discussing the definition of "closure" to be used in this negotiation process. I think it is fair to characterize both of our positions as being that "closure" is when further negotiations would not increase the likelihood of agreement on an issue. Although there are specific areas of unbundling that may require additional discussion as part of an overall agreement, our deep differences on the basic philosophy of unbundling suggest that we may be approaching closure on this issue. I suggest we schedule one more meeting on unbundled elements. At this meeting, I would expect AT&T to present detailed information on the services it is unable to provide using SWBT unbundled elements. After this discussion, we should be able to conclude whether or not additional meetings on unbundling will be fruitful or if we have indeed reached closure on the unbundled elements issues. Please advise me if you agree.

I believe this clarifies the outstanding issues and questions concerning our position on unbundled network elements. I hope it provides a framework within which we can work to reach agreement on these important matters. I will look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary A. Jahl". The signature is fluid and cursive, with the first name "Gary" and last name "Jahl" being more prominent than the middle initial "A.".

NEG010658

bcc: Gary Fleming
Mike Auinbauh
Jim Reese
Ric Zamora
Rich Fowler
Dale Hartung

NEG010659



July 3, 1996

Suite 570
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Mr. Gary A. Juhl
District Manager
Southwestern Bell Telephone Company
One Bell Center, Room 34-4-1
St. Louis, MO 63101

RE: AT&T and SWBT Interconnection Negotiations; Unbundled Elements

Gary:

AT&T is very concerned and disappointed that the views expressed by Southwestern Bell in your June 21, 1996, letter on the subject of unbundled elements, as we've discussed, effectively foreclose any realistic prospects for resolving these issues through the negotiations process.

We appreciate that at least progress has been made in connection with the Network Interface Device (NID) element, and that Southwestern Bell is exploring possibilities dealing with the SS7 element. However, from an overall perspective, virtually from the beginning of our negotiations on the subject of unbundled elements, we have encountered broad resistance on Southwestern Bell's part in reaching solutions to furnish the network elements we have requested. Southwestern Bell's various general assertions that the network elements we have requested are not required to be furnished under the Act due to economic cost considerations, and/or because alterations of its network would be involved, and/or because some elements are already available under access tariffs, have effectively inhibited the process of negotiating with us to find solutions.

The third paragraph on the first page of your June 21, 1996, letter references Mr. Saboo's earlier correspondence, which provided extensive detail about the unbundled elements we desire and various ways they could be combined. In response, your letter argues that if a service is offered by Southwestern Bell pursuant to resale, then AT&T cannot purchase Southwestern Bell unbundled elements in order to provide the service, and that combining all elements would amount to "circumventing" access charges.

First, the Act's resale requirements do not override the Act's unbundled elements requirements. Further, AT&T's provision of services through unbundled elements is not "the same" as resale; through unbundled elements, AT&T may provide

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consumers with different and higher quality services than those offered by incumbent LECs, which also carries with it a risk factor for AT&T which further differentiates our use of unbundled elements from resale. Last, we believe that the Act clearly contemplates our provision of access with unbundled elements.

On the second page of your letter, Southwestern Bell advises AT&T that although it had originally agreed that the cross-connection element could be employed to connect not only AT&T's facilities with those of Southwestern Bell, but with those of another carrier, Southwestern Bell has now decided the latter type of cross-connection will not be allowed. Denying AT&T the right to interconnect with another provider not only restricts AT&T's ability to compete effectively, but is not (and cannot be) claimed to be technically infeasible, and thus, Southwestern Bell's position is inconsistent with its duties under the Act.

The second page of your letter requires AT&T to explain to Southwestern Bell what services it cannot provide by utilizing the few unbundled elements which Southwestern Bell has offered. Southwestern Bell appears to be seeking to establish that impairment of AT&T's ability to provide a service is a threshold "test" we must meet in order to demonstrate that unbundled elements should be provided. The Act does not require that we must pass such a test before Southwestern Bell will have meaningful discussions with us to provide more than the few network elements it has offered. Neither the definition of unbundled elements contained in §153(45) nor the requirement that unbundled elements be provided, set forth in §251(c)(3), impose the "impairment" test which Southwestern Bell seeks to apply. As we discussed on Friday, we will review our notes relative to prior examples of service problems we would encounter which have been cited to Southwestern Bell in prior negotiations. We are not confident that investing a considerable amount of time in providing additional documentation to Southwestern Bell in this respect will move the discussions regarding unbundling forward.

The second page of Southwestern Bell's June 21 letter goes on to respond to our questions concerning the Advanced Intelligent Network ("AIN") element by summarizing comments it has filed in FCC Docket 91-346. We have provided Southwestern Bell with extensive documentation demonstrating that the provision of AIN is technically feasible. We view Southwestern Bell's position on this question as an expression of its decision not to negotiate further with us on this issue.

The June 21 letter next responds to AT&T's cost information and pricing proposals. Southwestern Bell states that it disagrees with the AT&T cost methodology employed, and advises that if certain of Southwestern Bell's unbundled elements are already provided in existing tariffs, there is nothing further to discuss. The fact that certain services are available through filed tariffs demonstrates that such network elements can and should be offered as unbundled elements under the Act, and that they should be provided based on costs. To that end, we believe that Southwestern Bell agreed on Friday to provide AT&T with its prices for Southwestern Bell's

unbundled elements for Texas, Missouri and Oklahoma. We are looking forward to receiving this information and would like to request receipt no later than Wednesday, July 10.

In the closing paragraph of your June 21 letter, Southwestern Bell states its belief that the differences between the parties are so great that we may be near the stage of "closure" on the subject of unbundled elements. At this juncture, AT&T can only conclude that all reasonable steps it can take to negotiate these issues have been exhausted, and therefore, we agree that closure has been reached, and we will agree to close discussions on this topic in the context of future negotiations sessions pending receipt of the pricing information referenced above.

Notwithstanding the foregoing conclusion, AT&T wishes to leave the door open on this very important subject. Of course, we encourage further progress in connection with the SS7 element. From a broad perspective we urge Southwestern Bell to reconsider the positions it has taken on the subject of unbundled elements, which in our view have impeded opportunities for meaningful progress to be made in this area.


Nancy M. Dalton
AT&T SW Region Business Planning VP

ATTACHMENT 11

Attachment 11

DOCKET NOS. 16189, 16196, 16226, 16285, 16290

<i>DOCKET NO. 16189</i>	§	PUBLIC UTILITY COMMISSION
PETITION OF MFS COMMUNICATIONS	§	
COMPANY, INC. FOR ARBITRATION	§	OF TEXAS
OF PRICING OF UNBUNDLED LOOPS	§	
	§	
<i>DOCKET NO. 16196</i>	§	
PETITION OF TELEPORT	§	
COMMUNICATIONS GROUP, INC. FOR	§	
ARBITRATION TO ESTABLISH AN	§	
INTERCONNECTION AGREEMENT	§	
	§	
<i>DOCKET NO. 16226</i>	§	
PETITION OF AT&T COMMUNICATIONS	§	
OF THE SOUTHWEST, INC. FOR	§	
COMPULSORY ARBITRATION TO	§	
ESTABLISH AN INTERCONNECTION	§	
AGREEMENT BETWEEN AT&T AND	§	
SOUTHWESTERN BELL TELEPHONE	§	
COMPANY	§	
	§	
<i>DOCKET NO. 16285</i>	§	
PETITION OF MCI	§	
TELECOMMUNICATIONS CORPORATION	§	
AND ITS AFFILIATE MCIMETRO ACCESS	§	
TRANSMISSION SERVICES, INC. FOR	§	
ARBITRATION AND REQUEST FOR	§	
MEDIATION UNDER THE FEDERAL	§	
TELECOMMUNICATIONS ACT OF 1996	§	
	§	
<i>DOCKET NO. 16290</i>	§	
PETITION OF AMERICAN	§	
COMMUNICATIONS SERVICES, INC. AND	§	
ITS LOCAL EXCHANGE OPERATING	§	
SUBSIDIARIES FOR ARBITRATION WITH	§	
SOUTHWESTERN BELL TELEPHONE	§	
COMPANY PURSUANT TO THE	§	
TELECOMMUNICATIONS ACT OF 1996	§	

COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY

COMES NOW Southwestern Bell Telephone Company (SWBT) pursuant to Subst. R. §22.309 and submits its comments on the proposed arbitrated interconnection agreements filed by AT&T, MFS, TCG and ACSI as a result of the compulsory arbitration conducted under Subst. R. §22.305.¹ SWBT signed the agreements with MFS, TCG and ACSI filed on November 19, 1996. Despite much progress, however, SWBT did not execute the document filed by AT&T on that date.²

SWBT's comments are divided into three basic areas: (1) AT&T's efforts to compel SWBT to "agree" to points on which AT&T did not prevail, or did not even raise, in the arbitration; (2) arbitration rulings on which SWBT respectfully requests Commission reconsideration; and (3) fundamental errors of law affecting the agreements, on which SWBT respectfully requests Commission reconsideration although SWBT recognizes the Commission may feel it has already fully considered or that consideration must be sought from other authorities.³

SWBT has not voluntarily entered into these "agreements." SWBT has entered into them under federal and state compulsion, reserving its rights under federal and state law to challenge their validity in appropriate forums. These proceeding were conducted pursuant to the Commission's Dispute Resolution Rules (published in 21 Tex. Reg. 8496, Sept. 3, 1996). SWBT incorporates by reference its comments filed in Project No. 15557 which led to the adoption of the rules. SWBT identified several legal concerns and deficiencies with said rules which form the framework for this proceeding. SWBT does not waive those arguments.

MCI filed a joint motion for extension of time to file its proposed interconnection agreement, which was granted, and the agreement is scheduled to be filed on December 30. SWBT reserves the right to file additional comments on any such filed document. Largely due to MCI's current unwillingness to work off of other contracts SWBT has entered into or the AT&T document, SWBT is concerned about the parties' ability to meet the new deadline.

³ SWBT presents the arguments, at a minimum, in order to demonstrate that it has exhausted administrative remedies.

I. THE AT&T DOCUMENT SHOULD NOT BE APPROVED AS FILED.

In its November 19 comments, SWBT has previously identified the major problems with the AT&T document, including that it proposes numerous provisions that were not arbitrated or agreed to by the parties.⁴ SWBT will not repeat in detail its November 19 comments other than to emphasize the significance of some of the issues raised therein.

First, the "as is" unbundling issue⁵ should be recognized for what it is -- a post-hearing ploy by AT&T to eliminate the distinction between unbundling and resale under the Federal Telecommunications Act of 1996⁶ (FTA 96) and in this arbitration. Second, AT&T's greedy approach to the most favored nation clause (MFN) of the FTA 96 would convert the world of interconnection agreements into a chaotic mess of "pick and choose." Third, AT&T's proposed "limitation of liabilities" provision is not commercially reasonable.⁷ Fourth, AT&T continues to

SWBT attaches hereto "side-by-side" documents providing proposed SWBT language on arbitrated and stipulated issues where the parties could not reach agreement on language (Attachment A, B). SWBT also attaches a document which contains the numerous provisions which AT&T included in its document even though the issues were not arbitrated or agreed to by SWBT. (Attachment C). All of those latter provisions are beyond Commission review. If the Commission is inclined to approve AT&T's proposed language as to non-arbitrated/non-agreed to provisions without the benefit of any record, SWBT's due process rights would be violated, and, at a minimum, SWBT should have the opportunity to present counter-language. SWBT's position should not be understood as implying that AT&T's additional issues are "out-of-bounds" for all time. Additional issues not raised during arbitrations may be addressed in future negotiations between the parties, which should be anticipated given the complexity of the new ground that all parties are plowing. This Commission, however, must approve, reject or modify an agreement that fairly implements its Award and not resolve the additional issues at this time.

The "as is" issue is AT&T's desire to avoid the responsibility of designing and ordering unbundled elements having customer's accounts converted "as is" on an unbundled basis rather than on a resale basis so that AT&T will have a choice of a much lower rate from SWBT than that provided in the Award. The "as is" issue could also be called an "unbundling/rebundling" issue.

Pub. L. No. 104-104, 110 Stat.56 (to be codified at 47 U.S. (§ 151 et seq.)

The "limitation of liabilities" provision of the TCG agreement is imminently more reasonable and more resembles the language previously approved by this Commission with

improperly pursue converting this local interconnection proceeding into an access reform proceeding. Fifth, AT&T did not arbitrate the prices of certain unbundled elements and related ordering and provisioning rates and also failed to engage in any post-award negotiations regarding the same.

"As is"/Combinations of Unbundled Elements - This issue has been the source of significant disagreement between the parties. SWBT's position is that although AT&T can order unbundled elements in combinations, AT&T must enumerate each element, feature, function, option, etc. when ordering unbundled elements (i.e., tell SWBT what it wants) as a means to provision AT&T customers' service.⁸ In addition, AT&T must designate how any two (or more) elements ordered at the same time are to be combined or provisioned to ensure that the service which results is in accordance with AT&T's expectations. AT&T's position that it can pre-define elements as combinations and can order these combinations as a single order entry is both erroneous and unlawful.

For example, AT&T wants to order a combination of network elements that represent the equivalent of a resold single residence line (1FR). Such a combination would encompass the unbundled local loop, unbundled switch port and a standard array of features and options. Ordering

negotiated agreements.

⁸ At explained in its November 19th comments, although SWBT is willing to provide a convert "as is" offering in a resale environment, there is no equivalent means of "as is" conversion in an unbundled element environment due, in part, to the differing systems involved in providing service to end users from those involved in providing elements to LSPs.

An LSP making use of unbundled elements is responsible for selection which elements it wants and determining whether to combine those elements with those it provides or obtains from a third party. AT&T's convert "as is" approach incorrectly makes SWBT responsible for selecting which elements an LSP should use. In addition, the AT&T approach makes the use of unbundled elements indistinguishable from resale, other than as to the price to be charged.

SWBT is willing to allow AT&T, and other LSPs, to combine the elements they select on a single LSR (industry-developed form for local service requests). However, SWBT submits that AT&T, and other LSPs, should be required to state which loop it wants in ordering an unbundled loop. An LSP should not be allowed to say it wants whatever loop, etc. SWBT happens to use today in delivering service to a particular end user.

multiple elements on one order is not the issue. Specifying a combination of elements on one order without specifically detailing the elements is the problem. In addition, AT&T wants to be able to "convert as is" without the responsibility of specifying the features or options it is ordering (e.g., if the line currently has call waiting and 3-way calling, AT&T wants those features activated automatically) which it will sell to its end users. SWBT cannot assume any particular provisioning configuration for an AT&T customer; such specification should be at the discretion of the service provider.

AT&T's position (which was not the subject of arbitration and should be rejected on that basis alone) eliminates any distinction between resale and unbundling. (See, e.g., AT&T document, Attachment 6, Unbundled Network Elements, Section 2.4. AT&T takes this position for the obvious economic reason that it wants to be able to use SWBT's network and services at extremely low unbundled TELRIC rates rather than comply with the resale provisions of FTA 96 and the Award and to avoid making its own investments and build its own network in order to compete head-to-head with SWBT.⁹ AT&T's position is contrary to both PURA 95 and FTA 96 which were both designed to promote facilities-based competition and resulting investment and jobs. More importantly, as with several of AT&T's issues, AT&T does not need a provision allowing it to convert "as is" for ordering elements for it to have a complete interconnection agreement.¹⁰

MEN - Nothing in this Award permits AT&T to demand unconditional access to any term or any condition or any price from any interconnection agreement. Contrary to the plain language of FTA 96, AT&T wants to be able to "pick and choose" any term, condition "or" price from any interconnection agreement (AT&T document, GTC 31.1). The Commission knows that prices, terms and conditions are all interrelated. For example, an LSP should not be allowed to mix

⁹ A more nefarious reason, other than pure economics, is AT&T's likely desire to avoid the joint marketing prohibition of Section 271(e)(1) of FTA 96 by using unbundled elements rather than resale.

¹⁰ The Commission should at least strike the term "and Combinations" throughout the unbundled network elements section of the AT&T filed document. Although SWBT is willing to have AT&T combine the elements it selects on a single LSR, AT&T uses the term "combination" to mean some capability of ordering existing services as a package, having SWBT combine them, rather than AT&T.

the price of a residential service with the terms of a business service. Further, Section 251(i) of FTA 96 clearly uses the phrase "terms and conditions." Congress knew when it wanted to use the word "and" as opposed to the word "or" and did not do so in Section 252(i). In fact, the purported "agreement" in this proceeding need not ever have an MFN provision because it is already in the FTA 96.

Limitation of Liabilities - Nothing in the Award permits AT&T to demand virtually no limitation on SWBT's potential liability. A key problem with AT&T's limitation of liabilities provision is that it does not place a commercially reasonable limitation on liabilities. (GTC 7.1). The AT&T provision suggests a "cap" of charges that a party may owe to the other party over the period of a year. According to AT&T, this could be hundreds of millions of dollars. A more reasonable limitation is the amount owed with respect to the service affected by the breach. This has been the traditional approach in telecommunications for decades and has been used in the recently filed TCG and MFS agreements. Certainly, SWBT's cost studies did not contemplate such unlimited liability. Requiring SWBT to "insure" AT&T through virtually unlimited inability without including the associated cost in the price amounts to a taking in violation of the United States and the Texas constitutions as will be discussed.

Limitations on Tariff changes - At §30.2 of the general terms and condition, AT&T has included language which would prevent SWBT from being able to file a tariff during the term of the Agreement that affects the services. One example of the impact of this provision is that it would prevent SWBT from seeking to stop offering a service that AT&T resells. This was not arbitrated by AT&T and should not be imposed upon SWBT.¹¹ A complete agreement can exist without this type of provision being included.

¹¹ One unintended consequence of such provision will be to keep SWBT from introducing new services because SWBT will be precluded from seeking to withdraw a service. For example, SWBT introduced a logo White Pages listing a year ago. If SWBT concludes that sales of such listings do not meet the projections of the business plan, SWBT should not be under any obligation to continue to offer logo listings simply because they are subject to resale under AT&T's agreement. If SWBT seeks to eliminate or alter an offering, AT&T will have an opportunity to comment on SWBT's proposal to change its tariff. If grandfathering a service SWBT alters/terminates is appropriate, such treatment will extend to AT&T's existing customers, as well as SWBT's.

Toll/access - Nothing in the Arbitration Award gives AT&T the right to have intraLATA toll calls placed via an unbundled switch port without compensating SWBT for the appropriate toll and access charges. AT&T seeks through document that the only charge that would apply is the unbundled local switching per minute of use charge. (See AT&T document, Attachment 6, Sections 2.15 and 2.22).

Pricing - AT&T (and other petitioners) raised certain pricing issues for certain services during the arbitration for specific elements and services.¹² During Post-award negotiations, AT&T requested a plethora of new items that were not identified or discussed during the arbitration case (e.g., additional switch port types, multiplexing, expedited order processes and intervals, expanded work hours, etc.). However, AT&T was unwilling during negotiations to discuss the prices, terms and conditions for these new items. (See AT&T document, Attachment 6, Appendix Pricing). For example, AT&T did not arbitrate the price for a DS1 Trunk Port. AT&T indicated in negotiations the intent to order DS1 Trunk Ports, but declined to discuss pricing. Also, AT&T indicated in negotiations an intent to purchase the local switching unbundled element and subsequently from time to time activate or deactivate certain features or functions such as call waiting or three way calling. However, AT&T has refused to discuss a nonrecurring charge for these subsequent activation or deactivations, apparently taking the position that the services order charge or the monthly recurring charge for the switch element itself covers these repeated activations or deactivations. A review of the cost studies makes clear that these anticipated activation or deactivation are not covered in the service order charge nor in the switch element charge. These are but two examples, of many issues which additional negotiations must take place before AT&T can avail itself of these items.

The Commission should not tolerate AT&T's avoiding addressing the issue of price of certain items during the arbitration, refusing to negotiate the items after the hearing, and then claiming that it is entitled to those elements under arbitrated elements and/or related items for free. Certainly the FTA 96 does not permit AT&T to use SWBT's network and services free of charge.

¹² As a result of the hearing, SWBT has been ordered to revise its cost studies, using a prescribed methodology, for these specific network elements by January 15, 1997. SWBT is currently in the process of revising these specific studies.

More importantly, as will be discussed, the United States and Texas Constitutions prohibit that result (i.e., a taking of property without just compensation).

Special Request Process - In addition, AT&T's document contains several provisions that, not only are beyond the scope of the arbitrated issues, but are also beyond any requirements of the FTA 96. For example, SWBT has offered a special request process to allow an LSP to request new or modified network elements with that has shorter and more specific time frames than those required by the FTA 96. Despite this fact, AT&T demands an even more expedited process. (See AT&T document, Attachment 6, Sections 2.24.11 and 2.24.12).

Branding - Another category of problems with the AT&T document is that it includes language that does not correctly implement the Award or stipulations. For example, AT&T has filed language that SWBT employees must notify customers that they are acting on behalf of "AT&T."¹³ This is not required by the Award in paragraph 33, and SWBT has not agreed to do so. Both the Award and related Commission discussions only require SWBT to state that the SWBT employee is "acting on behalf of the customer's local service provider." Worksession, October 31, 1996, Tr. 42-22. SWBT has also attached charts on arbitrated and stipulated issues where the parties have disputed language.¹⁴ (Attachments A, B).

Pole, Ducts, Conduits, Rights-of-Way - In addition, although the parties have successfully negotiated virtually all operational matters relating to access to poles, ducts, conduits, and rights-of-way, these still remain significant issues not stipulated, not arbitrated, and not successfully negotiated. AT&T now proposes, without agreement from SWBT, to add new "dark fiber" and "unused four-wire copper cable" provisions to the poles, ducts, conduits, and rights-of-way appendix. However, access to poles, ducts, conduits, and rights-of-way is in any way governed

¹³ The evidence at hearing raised the question if the service technician would even know on which LSP he or she was acting. In addition, some LSPs do not want the service technician to know.

¹⁴ As indicated, AT&T has also included language in its document that was not arbitrated or agreed to. SWBT has attached this language for ease of reference. (Attachment C). SWBT has counter language to such provisions but has not burdened the record with the same. SWBT is certainly willing to provide such language if so directed. SWBT also stands ready to negotiate further with AT&T.

by the Pole Attachment Act, 47 U.S.C. § 224. Neither precedent nor logic suggest that access to dark fiber, unused four-wire copper cable, or other facilities, or terms of connection with such facilities, is governed by the Pole Attachment Act. Accordingly, AT&T's added provisions, along with other unagreed provisions unilaterally added by AT&T, should be stricken from the pole, duct, conduit, and right-of-way appendix.¹⁵

¹⁵ The Commission should note that while AT&T adds its own unapproved language to the poles, ducts, conduits, and rights-of-way appendix, AT&T itself has stricken from that appendix all language proposed by SWBT with which AT&T did not agree. The stricken provisions include a number of reasonable provisions which SWBT will require, on a nondiscriminatory basis, of other telecommunications carriers and cable television systems having access rights under the Pole Attachment Act. The unilaterally omitted provisions include, but are not limited to, provisions calling on AT&T and authorized contractors to comply with specifically enumerated environmental laws, to comply with SWBT's environmental testing requirements before pumping water or other substances from SWBT's manholes, to refrain from conducting excavation activities and other make-ready work in a manner which jeopardizes or degrades the integrity of SWBT's structures or interferes with existing uses of those facilities, and to indemnify SWBT for damages resulting from such activities. After SWBT proposed a streamlining process which would enable AT&T to attach drop-wire drive rings and J-hooks without advance notice to SWBT, AT&T accepted that process and then unilaterally deleted a provision which would call on AT&T to apply for licenses after the fact in those cases in which AT&T attached drive rings or J-hooks to SWBT poles for which AT&T had no prior licenses at all.

In short, AT&T gutted the basis for SWBT's proposal, taking what it liked and removing a provision essential to agreement. AT&T has excised without approval provisions enabling SWBT to control unauthorized attachments and to change rates, charges, and fees as permitted or required by the Pole Attachment Act. Although revenues to SWBT for the use of its poles, ducts, conduits, and rights-of-way will be minimal, and although a large number of liabilities may arise in connection with the use of SWBT's extensive outside plant facilities, AT&T is totally unwilling to agree to limitation-of-liabilities provisions which bear any relation to the revenues SWBT will receive from AT&T's use of SWBT's outside plant facilities.

AT&T does not wish to follow the rules which SWBT applies to itself and instead seeks to obtain for itself undue exemptions from various provisions necessary for SWBT to maintain adequate controls over its own facilities. AT&T is not even willing to agree to SWBT's standard language that pole attachment and conduit occupancy licenses issued under former agreements shall be governed by the terms of the new agreement. In this regard, SWBT notes that it would be willing to abide by the same rules it proposes when utilizing AT&T's facilities. SWBT believes that AT&T would insist on similar protections if it were willing to make its facilities available to SWBT, although present indications are that AT&T views this area as a one-way street in which AT&T will not be required to permit SWBT to use any of AT&T's

In short, SWBT cannot agree to AT&T's proposed appendix on poles, ducts, conduits, and rights-of-way until the unilaterally excised provisions are restored by AT&T and other issues not presented to the Commission for resolution are successfully negotiated or arbitrated in due course. However, SWBT notes that AT&T has immediate access to SWBT's poles, ducts, conduits, and rights-of-way at any time by entering into SWBT's standard Master Agreement for Access for Poles, Ducts, Conduits, and Rights-of-Way without prejudicing its right to seek changed terms through continued negotiation and arbitration proceedings before the PUC, including the June 13, 1997 review.

II. THE COMMISSION SHOULD RECONSIDER SEVERAL OF ITS RULINGS.

The Commission has previously determined that when some issues are negotiated and some are arbitrated, it will apply §252(e)(2)(A) standards to negotiated terms and §252(e)(2)(B) to arbitrated terms.¹⁶ (Of course, there is no standard of review for non-arbitrated/non-negotiated terms). In this proceeding, the Commission encouraged the parties to file a single document and recognized that such document would include both negotiated and arbitrated terms (AT&T has also included a third, "unilateral" category of terms). In those cases where single documents were submitted on November 19, the parties filed one agreement with both types of terms (i.e., a "package deal"). In such a circumstance, the Commission has said that it would review all issues under the arbitrated review standard of §252(e)(2)(B).¹⁷

In filing these comments as an interested person, SWBT is entitled under FTA 96 and Subst. R. §22.309 to discuss why the agreement does not meet the requirements of FTA 96 §251, including any FCC regulation implementing §251; or is not consistent with the standards established in FTA 96 §252(d); or is not consistent with other requirements of state law. As will be seen, while SWBT has successfully negotiated certain provisions with AT&T (and while SWBT does not find

outside plant facilities.

Dispute Resolution Rules rulemaking, 21 Tex. Reg. at 8493.

¹⁷

Id. The Commission also indicated during the rulemaking that the parties could file negotiated and arbitrated issues as separate agreements.